

Regulatory Analysis Form

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Regulatory Analysis Form

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REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania Emergency Management Agency

(2) I.D. Number (Governor's Office Use)

#30-55

#30-56

#30-57

#30-58

IRRC Number: 2159

(3) Short Title

- Reductions of Major Water Use in the Delaware River Basin Drought Emergency Area
- Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area
- Philadelphia Drought Water Emergency Plan
- Local Water Rationing Plan

(4) PA Code Cite

4 Pa. Code Chapter 118

4 Pa. Code Chapter 119

4 Pa. Code Chapter 119a

4 Pa. Code Chapter 120

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mark Goodwin 717-651-2010

Secondary Contact: Stuart Gansell 717-783-7420

(6) Type of Rulemaking (Check One)

- Proposed Rulemaking
 Final Order Adopting Regulation
 Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

- No
 Yes: By the Attorney General
 Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The revised regulations will be effective at all times, rather than only during declared drought emergencies. They will also be effective statewide, rather than only in the declared emergency area. This will enable the designation of a permanent Commonwealth Drought Coordinator (CDC) within the Department of Environmental Protection. It will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth. While the regulations will remain in effect at all times, implementation of actual emergency provisions of the regulations, including the nonessential water use bans, would only be effective during a declared emergency and within the declared emergency area, as before.

Chapter 118

Chapter 118 requires the submittal of drought contingency plans by public water suppliers and major industrial/commercial water users. References limiting the effective area of the regulations to the Delaware River Basin are being removed from the regulations in order to make them applicable statewide.

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(8) Continued...

To the extent practicable, references to the Pennsylvania Emergency Management Agency (PEMA) with regard to submittal and review of drought contingency plans are being removed from the regulations, and authority and responsibility for those activities are being delegated to the CDC, as agent for PEMA. In a similar manner, the current authorities and responsibilities of the Emergency Management Council in the appeal process are being assigned to PEMA and further delegated to the extent practicable to the Public Utility Commission's administrative law judges or others.

Chapter 119

Chapter 119 contains the bans on nonessential water use, which are effective during a declared drought emergency. Many revisions are being proposed in Chapter 119. As in Chapter 118, to the extent practicable, responsibilities and authorities are being delegated from the Council to PEMA and from PEMA to the CDC. These procedures again affect plan or variance submissions, reviews, approvals and appeals.

The effective emergency area is being expanded to include the complete service area of any public water supply agency whose source of water is located in the declared emergency area. The revisions provide that a public water supply agency whose sources are not in jeopardy, although located within a declared emergency area, may request a variance from the nonessential use bans, if the agency is following a drought contingency plan that was approved by the CDC within the previous three years.

Definitions have been added to clarify the meanings of athletic field, newly seeded and sodded grass, effective conservation, professional landscaper and irrigation contractor.

A new section is added to specifically address athletic fields, which were previously considered part of the "lawn" section. Separate regulations are provided for normal athletic fields and sand-based fields. Irrigation of sand-based fields will require metering and reporting and must be done according to a plan approved by the CDC. Normal athletic fields will be limited to watering one time per week; while sand-based fields will be limited to one and a half inches of water per week.

The golf course regulations have been completely rewritten. As with the sand-based athletic fields, irrigation of golf courses will require metering and reporting and must be done according to a plan approved by the CDC. The golf courses will be required to reduce their watering to 70 percent of the average daily quantity of water used, by month, in the previous 5 years, within lower and upper limits.

The grass and landscape/nursery sections of the regulations are being modified primarily to recognize the efficiencies in using automated irrigation systems, compared to the "hand-held bucket and hose" techniques allowed in the current regulations.

Fountains or waterfalls necessary to sustain fish life will be allowed to operate; water will be allowed to be used to replenish fish ponds and water gardens to sustain fish and aquatic life.

Revisions in the mobile equipment and paved surface sections recognize the need to wash

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(8) Continued...

equipment or areas related to food vending and hauling. The use of a hand-held hose with automatic shutoff nozzle will be allowed, up to two minutes, for washing personal cars, recognizing that this will generally require less water than the "bucket" method allowed in the current regulations.

The fire hydrant regulations previously contained in Chapter 119a are being incorporated into Chapter 119; while Chapter 119a, which dealt specifically with Philadelphia, is being eliminated.

Chapter 119a

This chapter, which applies specifically to Philadelphia, is being eliminated and the section on fire hydrants is being incorporated into Chapter 119, as indicated above.

Chapter 120

This chapter applies solely to public and municipal water supply systems, and allows either the municipality or the water supply agency to institute water rationing if the bans on nonessential water uses effected through Chapter 119 are insufficient to protect local water supplies. The suggested revisions to this chapter are primarily procedural in nature, some of them reflecting the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Again, the appeal processes reflect the intended use of Public Utility Commission administrative law judges as hearing officers. In addition, procedures for amendment or repeal of an implemented rationing plan are being simplified.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Emergency Management Services Code (35 Pa. C.S. §§ 7101-7707).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Emergency Management Services Code

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(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Introduction

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found at Chapters 118, 119 and 120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate with automated irrigation systems than to water with a hand-held hose in many cases.

Overall, our experience has also shown us the potential for more efficient ways to manage water use during drought emergencies. For example, a permanent Commonwealth Drought Coordinator, with authority to approve drought plans prior to a drought, rather than during an emergency, would enable the Emergency Management Council to focus more clearly on drought emergency operations and at the same time provide for more meaningful reductions in and more efficient use of available water resources.

The proposed revision will move the Commonwealth toward full-time drought preparedness and management. It will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth, thus allowing more opportunity to provide education and technical assistance to water users to guide them in the development of their individual drought plans. It will also allow more time for the CDC and related staff to adequately review plans and to approve them prior to an actual emergency.

Chapter 118

The Chapter 118 regulations were originally written to apply only to the Delaware River Basin portion of the Commonwealth. Many of the activities involved in submittal and review of drought contingency plans, as required by the regulations, included duplications of effort by both PEMA and the CDC.

Chapter 119

Problems were experienced previously when public water supply service areas extended beyond an emergency county into a non-emergency county, with the result that only a part of the service area was subject to emergency restrictions. Public water supply systems located within a declared emergency area may have adequate sources or reserves of water and are thus unnecessarily impacted by bans on nonessential water use.

Golf courses have been impacted to the extent of significant grass loss because of insufficient irrigation allowances, while others have been able to circumvent the nonessential water use restrictions because of inadequate enforcement ability in the current regulations.

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(11) Continued...

Citizens were forced to request variances under the current regulations in order to protect fish and aquatic life in fish ponds and water gardens.

Similarly, variances were required in order to wash equipment or areas related to food vending and hauling.

Chapter 120

Procedural changes are required in order to reflect the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Procedures for amendment or repeal of an implemented rationing plan are complicated and confusing in the current regulations.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Under the current regulations, many citizens are inconvenienced by the need to prepare and submit requests for variances from the nonessential water use regulations for certain forms of water use that are generally approved by the Commonwealth Drought Coordinator anyway, such as for operation of essential aeration equipment in fish ponds, or washing paved surfaces or mobile equipment associated with food vending or hauling. This poses unnecessary stress and/or loss of income or property to those individuals while awaiting approval of their requests. Many provisions of the current regulations no longer serve to manage water use in the most effective manner, as a result of changing technologies during the past 20 years, such as use of modern automatically-controlled irrigation equipment, thus posing unwarranted risk to both the environment and to health, safety and welfare.

While the Commonwealth has yet to experience a drought severe enough to warrant general cutbacks in industrial/commercial water uses, the revisions will clarify and effectuate statewide the requirements for such users to plan for cutbacks in order to protect life and health-sustaining water uses should such conditions occur.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The revisions will help protect the livelihoods of thousands of individuals involved in the landscaping business across the Commonwealth, while at the same time managing water use for irrigation of gardens and shrubs far more effectively than do the current regulations. Thousands of organizations and schools owning athletic fields will be better able to protect their fields as well as the safety of their players as a result of the sweeping revisions to the athletic field regulations. Similarly, over 700 golf courses across the Commonwealth will be able to protect this multi-million dollar industry by being able to more effectively use the water allotted to them under the completely-revised golf course regulations. Hundreds of individuals involved in mobile power washing businesses will be able to sustain their livelihoods while more effectively restricting water use for washing allowed surfaces and mobile equipment. Thousands of citizens will benefit from the provisions for maintaining fish ponds and water gardens. Millions of citizens will benefit from the revised car-washing provisions.

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(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

We do not anticipate adverse effects resulting from the revisions. The revisions have all been developed to positively address adverse effects that resulted from the current regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

- **Chapter 118 - Approximately 2000 public water supply systems and perhaps as many as 2500 large industrial/commercial users, statewide, would be affected, but these numbers would be restricted to the specific emergency area declared in any particular drought.**
- **Chapter 119 - The entire citizenry of the Commonwealth, but again restricted to the specific emergency area declared.**
- **Chapter 120 - Approximately 2000 public water supply systems, statewide, but this number would be limited generally to only a very few systems who may need to implement rationing in an emergency area.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

During preparation of the proposed revisions to the regulations, meetings were held with representatives of the golf course industry, athletic field owners (both public and private), the landscape and nursery industry, the public water supply industry (both public and private investor-owned), and the food processing industry. Additionally, three public information meetings were held in Pittsburgh, Harrisburg and Bethlehem, at which the revisions were described to the public in attendance. Comments were accepted from the public, as well as from the specific interest groups mentioned above, and all comments were considered and incorporated to the extent practicable in the final recommended revisions. Revisions relating to the interest group representatives were provided to them, and generally, their concurrence was secured.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include the golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of five prior years' irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700-1500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

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(17) Continued...

Savings will generally accrue to all the regulated community, to the extent that property and employment is protected by the revisions. These savings will occur in the form of reduced damage to or loss of grass or landscape materials, for not only the athletic field and golf course owners, but other businesses and homeowners as well. All the revisions have been designed to better protect property, health and employment. Jobs in the golf, landscape/nursery, mobile washing, and food processing and vending industries will be better protected. Athlete safety will be enhanced on athletic fields. Actual or estimated values for these savings, which will only accrue during an actual declared drought emergency, are not available.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Because the revisions are designed to make the regulations clearer, and many of the compliance problems experienced with the current regulations are being addressed in the revisions, costs to local enforcement agencies should be reduced, or at least should not increase.

Local governments may experience additional costs associated with municipally-owned athletic fields or golf courses, as described in Question 17, above.

Savings, as described in Question 17, may likewise accrue to local governments or school districts, to the extent that they own or maintain athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also, as described in Question 17.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The primary cost to DEP will be in staff time to review and approve irrigation plans submitted by approximately 800 golf courses and 50 sand-based athletic fields. Approximately 0.5 to 2.5 hours per plan may be required for review and approval. This represents a one-time resource commitment of up to 2000 man-hours. Semi-automation of the process may reduce this requirement significantly, perhaps to as little as 250-500 man-hours.

Savings will accrue to DEP through reduced time required for processing requests for variances from the non-essential water use bans. The revisions are designed to resolve most of the problems in the current regulations that led to requests for variances. In the 1999 drought, nearly 250 variance requests were processed, requiring approximately one man-hour each.

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(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year | FY +1 Year | FY +2 Year | FY +3 Year | FY +4 Year | FY +5 Year |
|------------------------|--------------------|---------------|---------------|---------------|---------------|---------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Local Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| State Government | \$3000 | \$3000 | \$3000 | \$3000 | \$3000 | \$3000 |
| Total Savings | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| COSTS: | | | | | | |
| Regulated Community | \$812,500 | Unknown | Unknown | Unknown | Unknown | Unknown |
| Local Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| State Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Total Costs | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | \$812,500 | Unknown | Unknown | Unknown | Unknown | Unknown |
| Local Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| State Government | Unknown | (\$3000) | (\$3000) | (\$3000) | (\$3000) | (\$3000) |
| Total Revenue Losses | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |

(20a) Explain how the cost estimates listed above were derived.

(a) State government savings are based on 500 variances processed during droughts in the 1990s, or an average of 50 per year, at an assumed savings of one man-hour or \$60.00 apiece, resulting in \$3000 per year savings. Additional costs, primarily in staff time related to processing athletic field and golf course drought operations plans, are unknown.

(b) Regulated community costs are based upon an average meter installation cost of \$1000 for 800 golf courses and \$250 for 50 athletic fields.

Most costs, if any, and savings are listed as unknown due to the uncertainty of drought occurrence and the actual value of property or income savings that may result from the revisions.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

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| Program | FY - 3 | FY - 2 | FY - 1 | Current FY |
|---------|---------|---------|---------|------------|
| Unknown | Unknown | Unknown | Unknown | Unknown |
| | | | | |
| | | | | |
| | | | | |

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Overall, this is not possible to answer because of the large number of unknowns. Just based upon the actual estimated costs presented, and assuming that each golf course could reasonably save in excess of \$1000 in costs for replacing fairway grass, there would be an overall net savings to golf courses resulting from the proposed revisions. Many immeasurable savings will accrue throughout the regulated community. Overall, those additional savings are anticipated to far outweigh the remaining costs to state government.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not Applicable

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Non-metered alternatives were discussed with the golf course and athletic field interests. Their preference was to use the metered approach.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not Applicable

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(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Our nonessential water use restrictions are generally compatible with surrounding states, as witnessed during the 1999 drought that affected all neighboring states except Ohio and West Virginia. No competitive disadvantage is foreseen. Maryland, Delaware, New Jersey and New York are all currently revising their drought management regulations as well, and all four states are considering Pennsylvania's approach as a guide for fashioning their new regulations.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

DEP regulations will not be affected by the revisions.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

As indicated in Question 16, public meetings were held in Harrisburg, on April 5, 2000; in Bethlehem on April 6, 2000; and in Pittsburgh on April 18, 2000. Additionally, several meetings were held in Harrisburg, during December 1999 and January 2000, with representatives of the golf course, landscape/nursery, athletic field and public water supply interests.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

During declared drought emergencies only, owners of golf courses and sand-based athletic fields will be required to report irrigation usage to the CDC, on a monthly basis. Owners of golf courses should record usage for a five-year period prior to a drought emergency; this information will be included in their application for approval of a drought operations plan.

No reporting forms have been developed at this time.

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(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

While not affecting farmers directly, the mobile equipment washing restrictions are being revised to allow washing of feed trucks, to help prevent spread of animal diseases between farms. The regulations are being revised specifically to address problems previously encountered by owners and operators of public water supply systems, golf courses, athletic fields, landscape/nursery businesses, mobile power-wash businesses, food processing and vending businesses, fish ponds, water gardens, and automated landscape irrigation systems.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Although no specific date is specified, approval of the proposed regulation revisions is anticipated to occur prior to December 31, 2000. Compliance with the regulations is only required during a declared drought emergency. Provisions of the regulations that apply absent a declared drought emergency are optional and are to the advantage of the segments of the regulated community to which they may apply, such as golf courses, athletic fields and public water supply agencies. Drought operation plans must be approved prior to actual irrigation of golf courses or sand-based athletic fields during a declared drought emergency; therefore approval prior to a drought is to the advantage of owners of such facilities.

(31) Provide the schedule for continual review of the regulation.

The regulations, as in the past, will be reviewed during each declared drought emergency, in order to determine from actual experience any reasonable or necessary modifications.

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

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LEGISLATIVE REGULATORY
REVIEW COMMISSION

2159

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Copy below is hereby approved as to
form and legality. Attorney General

BY: *[Signature]*
(DEPUTY ATTORNEY GENERAL)

SEP 19 2000

DATE OF APPROVAL

Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

PENNSYLVANIA EMERGENCY
MANAGEMENT AGENCY

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 30-58

DATE OF ADOPTION: 8/11/00

BY: *[Signature]*

DIRECTOR

TITLE: (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independ-
ent Agencies.

BY: *[Signature]*

8/24/00

DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

Check if applicable. No Attorney Gen-
eral approval or objection within 30
days after submission.

Notice of

Proposed Rulemaking

Pennsylvania Emergency Management Agency

4 Pa. Code Chapter 120

Local Water Rationing Plans

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REVIEW COMMISSION

Notice of Proposed Rulemaking
Emergency Management Agency
(4 Pa. Code Chapters 118, 119, 119a and 120)
(Reductions of Major Water Use, Nonessential Water Uses, Water Emergency Plan
and Local Water Rationing Plans)

Preamble

The Pennsylvania Emergency Management Agency (PEMA) proposes to amend 4 Pa. Code Chapters 118, 119, 119a and 120 (relating to Reductions of Major Water Use in the Delaware River Basin Drought Emergency Area, Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area, Philadelphia Drought Water Emergency Plan and Local Water Rationing Plans). The proposed amendments to Chapter 118 will make them applicable statewide, rather than just in the Delaware River Basin. The proposed amendments to Chapter 119 include proposed changes to the definition section and to the list of exceptions to the nonessential water use bans. The provisions of Chapter 119a are proposed to be eliminated and to be incorporated into Chapter 119. The proposed amendments to Chapter 120 are primarily procedural. Overall, the proposed amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared drought emergency area.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Mark L. Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364, (717) 651-2010. Information regarding submitting comments on these proposed regulations appear in Section I of this preamble. This proposal is available electronically through the PEMA web site at <http://www.pema.state.pa.us>. It is also available on the Department of Environmental Protection web site at <http://www.dep.state.pa.us> by choosing "Subjects" then "Drought Information" and then clicking on "Drought Regulations."

C. Statutory Authority

The proposed rulemaking is being made under the authority of Section 7313(3) of the Pennsylvania Emergency Management Services Code (Code), 35 Pa.C.S. § 7313(3), which grants PEMA the authority to adopt such rules and regulations as may be deemed necessary to carry out the provisions of the Code.

D. Background and Purpose

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found at Chapters 118, 119, 119a and 120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate in many cases with automated irrigation systems than to water with a hand-held hose.

Overall, the Commonwealth's experience with droughts has also shown the potential for more efficient ways to manage water use during drought emergencies. Experience has shown, for example, that a permanent Commonwealth Drought Coordinator (CDC), with authority to approve drought plans prior to a drought, rather than during an emergency, would enable the Agency to focus more closely on drought emergency operations, and at the same time would provide for more meaningful reductions in and more efficient use of available water resources.

The proposed amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared drought emergency area, as is presently the case. However, the revised regulations will be effective at all times, rather than only during declared drought emergencies. They will also be effective statewide, rather than only in the declared emergency area. This will enable the designation of a permanent Commonwealth Drought Coordinator within the Department of Environmental Protection (DEP). The proposed regulations will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth, thus allowing more opportunity to provide education and technical assistance to water users to guide them in the development of their individual drought plans. It will also allow more time for the CDC and DEP staff to adequately review plans and to approve them prior to an actual emergency. This is in concert with new provisions in the regulations that require certain classes of water users, such as golf courses, to operate according to an approved plan during an emergency.

Drafts of the proposed amendments were made available at informational meetings held during April 2000 in Harrisburg, Bethlehem and Pittsburgh. Notices of the

meetings and the availability of the draft regulations also were published in newspapers of general circulation across the Commonwealth and in the *Pennsylvania Bulletin* with a public comment period that ended April 30, 2000. The public comment received has been taken into consideration in the drafting of these proposed amendments to the drought regulations.

E. Summary of Regulatory Requirements

1. *Discussion of Proposed Amendments to Chapter 118*

The Chapter 118 regulations were originally written to apply only to the Delaware River Basin portion of the Commonwealth. References to the Delaware River Basin are being removed from the regulations in order to make them applicable statewide. Many of the activities involved in submittal and review of drought contingency plans, as required by the regulations, included duplications of effort by both PEMA and the CDC. To the extent practicable, references to PEMA with regard to those activities are being removed from the regulations, and authority and responsibility for those activities are being delegated to the CDC, as agent for PEMA. In a similar manner, the current authorities and responsibilities of the Pennsylvania Emergency Management Council in the appeal process, are being assigned to PEMA and further delegated to the extent practicable to the Public Utility Commission's administrative law judges or others.

In Section 1, definitions of "consumptive water", "designated drought emergency area", and "water user" have been added, and the definitions of "Commonwealth Drought Coordinator" has been revised, consistent with Chapters 119 and 120.

In Section 2, the requirement for drought contingency plans has been limited to only those public water suppliers serving more than 50 customer connections.

In Section 3, the scope has been revised to include the entire Commonwealth, rather than just the Delaware River Basin.

In Section 4, revisions will allow the CDC as well as the Governor's Emergency Proclamation to order preparation of drought contingency plans by public water suppliers, including those whose sources or service areas may be located within the emergency area. Plans approved by the CDC within 3 prior years will meet the requirement. Provisions and criteria for variances from the plans are added to the requirements.

Section 5 revisions will allow the CDC as well as the Governor's Emergency Proclamation to order preparation of drought contingency plans by large self-supplied industrial and commercial water users.

Section 6 is revised to include criteria to guide the CDC's consideration of equitable reductions when ordering the implementation of industrial/commercial contingency plans.

Section 8 revisions clarify and improve the due process protections provided to those parties who request variances due to extraordinary hardship.

Section 9 establishes requirements for establishment and operations of county drought management task forces.

2. *Discussion of Proposed Amendments to Chapter 119*

Chapter 119 contains the bans on nonessential water use, which are effective during a declared drought emergency. Many revisions are being proposed in Chapter 119. As in Chapter 118, to the extent practicable, responsibilities and authorities are being assigned from the Council to PEMA and delegated from PEMA to the CDC. These procedures again affect plan or variance submissions, reviews, approvals and appeals.

The effective emergency area is being expanded to include the complete service area of any public water supply agency whose source of water is located in the declared emergency area. This will eliminate problems experienced previously when public water supply service areas extended beyond an emergency county into a non-emergency county with the result that only a part of the service area was subject to emergency restrictions.

In Section 1, definitions have been added or revised to clarify the meanings of athletic field, effective conservation, irrigation contractor, newly seeded and sodded grass, paved surface, and professional landscaper and for consistency with Chapters 118 and 120.

In Section 4, revisions are added to specifically address athletic fields, which were previously considered part of the "lawn" section. Regulations are provided separately for normal athletic fields and sand-based fields, because the sand-based fields (similar to golf greens) require more frequent and greater quantities of watering. Irrigation of sand-based fields will require metering and reporting and must be done according to a plan approved by the CDC. Normal athletic fields will be limited to watering one time per week; while sand-based fields will be limited to one and a half inches of water per week.

The golf course regulations in Section 4 have been rewritten. As with the sand-based athletic fields, irrigation of golf courses will require metering and reporting and must be done according to a plan approved by the CDC. The golf courses will be required to reduce their watering to 70 percent of the average daily quantity of water used, by month, in the previous 5 years, within lower and upper limits.

The Section 4 grass and landscape/nursery regulations are being modified primarily to recognize the efficiencies in using automated irrigation systems, compared to the "hand-held bucket and hose" techniques allowed in the current regulations.

Fountains or waterfalls necessary to sustain fish life will be allowed to operate under Section 4 revisions; water will be allowed to be used to replenish fish ponds and water gardens to sustain fish and aquatic life.

Revisions in the mobile equipment and paved surface regulations in Section 4 recognize the need to wash equipment or areas related to food vending and hauling. The use of a hand-held hose with automatic shutoff nozzle will be allowed, up to two minutes,

for washing personal cars. This process will generally require less water than the "bucket" method allowed in the current regulations.

The fire hydrant regulations previously contained in Chapter 119a are being incorporated into Section 4; while Chapter 119a, which dealt specifically with the County/City of Philadelphia, is being eliminated.

In Section 6, the revisions provide that a public water supply agency whose sources are not in jeopardy, although located within a declared emergency county, may request a variance from the nonessential use bans, if the agency is following a drought contingency plan that was approved by the CDC within the previous three years.

Section 6 variance procedures are modified to improve due process.

Section 7 is being stricken in order to make the regulations effective full-time; although restrictions will only be effective during a declared drought emergency.

3. *Discussion of Proposed Amendments to Chapter 119a*

This chapter, which applies specifically to the County/City of Philadelphia, is being eliminated and the section on fire hydrants is being incorporated into Chapter 119, Section 4, as indicated above.

4. *Discussion of Proposed Amendments to Chapter 120*

This chapter applies solely to public and municipal water supply systems and allows either the municipality or the water supply agency to institute water rationing if the bans on nonessential water uses effected through Chapter 119 are insufficient to protect local water supplies. The suggested revisions to this chapter are primarily procedural in nature, some of them reflecting the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Revisions are included to improve due process and notification provisions.

Section 1 definitions have been revised for consistency with Chapters 118 and 119 definitions.

Section 2 revisions authorize the CDC to approve water rationing plans, as an agent of PEMA.

In Section 9, the appeal processes reflect the intended use of Public Utility Commission administrative law judges as hearing officers.

Section 10 is being deleted, as unnecessary. It is not envisioned that a rationing plan would be suspended. Water supply recovery would result in repeal rather than suspension of the rationing plan.

In Section 14, the repeal process has been clarified and simplified.

F. Benefits, Costs and Compliance

Benefits

The proposed amendments to the regulations will benefit the public by protecting water resources during a declared drought emergency and will prevent water supply shortages by curtailing nonessential water use. The procedures will be streamlined for adoption of drought contingency plans and local water rationing plans.

The exact fiscal impact of the proposed amendments cannot be calculated. For most affected persons or businesses, the impact will be positive in terms of reducing possible economic hardship. Paperwork will be reduced by the proposed amendments to Chapter 119 by reducing the number of variance applications prepared by individuals, business and industry. Additionally, DEP and PEMA will not have to process as many applications.

The benefits of the proposed amendments in conserving a natural resource are impossible to quantify. Reductions in water use, although inconvenient to many users, will serve to extend available supplies, thus insuring that water is available for public health and safety needs and economic productivity. The availability of existing supplies will be extended by reducing the daily withdrawal of water from sources, providing an opportunity for replenishment over time should there be adequate precipitation. Extending water supplies also provides an opportunity for water suppliers to develop alternative sources of water.

Savings will generally accrue to all the regulated community, to the extent that property and employment is protected by the revisions. These savings will occur in the form of reduced damage to or loss of grass or landscape materials, for not only the athletic field and golf course owners, but other businesses and homeowners as well. All the revisions have been designed to better protect property, health and employment. Jobs in the golf, landscape/nursery, mobile washing, and food processing and vending industries will be better protected. Athlete safety will be enhanced on athletic fields. Actual or estimated values for these savings, which will only accrue during an actual declared drought emergency, are not available.

Savings may likewise accrue to local governments or school districts, to the extent that they own or maintain athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also.

Savings will accrue to DEP through reduced time required for processing requests for variances from the non-essential water use bans. The revisions are designed to resolve most of the problems in the current regulations that lead to requests for variances. In the 1999 drought, nearly 250 variance requests were processed, requiring approximately one man-hour each.

Compliance Costs

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of five prior years' irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700-1500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

Because the revisions are designed to make the regulations clearer, and more efficient, and many of the compliance problems experienced with the current regulations are being addressed in the revisions, costs to local enforcement agencies should be reduced. Local governments may experience additional costs associated with municipally-owned athletic fields or golf courses, as described above.

The primary cost to DEP will be in staff time to review and approve irrigation plans submitted by approximately 800 golf courses and 50 sand-based athletic fields. Approximately 0.5 to 2.5 hours per plan may be required for review and approval. This represents a one-time resource commitment of up to 2000 man-hours. Semi-automation of the process may reduce this requirement significantly, perhaps to as little as 250-500 man-hours.

Compliance Assistance Plan

DEP provides guidance, sample plans and technical assistance to public water suppliers for developing drought contingency plans, water rationing plans and water conservation plans and programs. Similar materials will be developed for industrial/commercial water users to aid them in development of drought contingency plans, to the extent practicable.

Web-based, self-instructional application forms will be developed for submitting golf course and athletic field drought operations plans, and technical assistance will be provided as appropriate.

Paperwork Requirements

Owners of golf courses and sand-based athletic fields will be required to submit a drought operations plan for approval by the CDC, prior to irrigation of such facilities within a declared drought emergency area. The regulations will allow submittal and approval of such plans prior to the declaration of an emergency, at the option and advantage of the owner.

During declared drought emergencies only, owners of golf courses and sand-based athletic fields within the declared emergency area will be required to report irrigation usage to the CDC, on a monthly basis. Owners of golf courses should also record usage for a five-year period prior to a drought emergency. This information will be included in their application for approval of a drought operations plan.

Owners of public water supply systems and large self-supplied industrial or commercial water users whose sources or service areas are located within a declared emergency area may be required by the Governor or the CDC to submit drought contingency plans, during the declared emergency. The regulations provide for the submittal and approval of such plans prior to an emergency, again at the option and advantage of the owner.

G. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by PEMA to determine whether the regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), on October 24-, 2000, the Agency submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Veterans Affairs and Emergency Preparedness Committee and Senate State Government Committee. In addition to submitting the proposed amendments, the Agency has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Agency within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Agency, the General Assembly and the Governor of objections raised.

I. Public Comment

Written Comments – Interested persons are invited to submit comments, suggestions, or objection regarding the proposed regulation to Mark L. Goodwin, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364. Comments submitted by facsimile will not be accepted. Comments, suggestions, or objections must be received by the Agency by _____, 2000 (within 30 days of publication in the *Pennsylvania Bulletin*).

Electronic Comments – Comments may be submitted electronically to PEMA at mgoodwin@state.pa.us and must also be received by the Agency by _____, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

BY:

David L. Smith, Director
Pennsylvania Emergency Management Agency

CHAPTER 120. LOCAL WATER RATIONING PLANS

Section.

- 120.1. Definitions.
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- 120.3. Objective of a plan.
- 120.4. Responsibility to monitor local water supply and implement water conservation measures.
- 120.5. Implementation of plans.
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- 120.7. Enforcement of plans.
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- ~~120.10. Temporary suspension of water rationing provisions.~~
- 120.11. Enforcement by political subdivision ordinance.
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- 120.14. Repeal of a plan.
- 120.15. Notification of termination.

§ 120.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Applicant—The governing body of a political subdivision, ~~a purveyor~~ or a public water supply agency which experiences a local water shortage in the service area covered by its plan.

Commonwealth Drought Coordinator—An officer of the Department appointed by the Secretary OF THE DEPARTMENT, to carry out, AS AGENT OF PEMA, responsibilities ESTABLISHED IN THE PENNSYLVANIA DROUGHT CONTINGENCY PLAN to coordinate Commonwealth PLANNING, PREPAREDNESS AND response action to a drought or water shortage emergency.

Council—~~The Pennsylvania Emergency Management Council.~~

Department—The Department of Environmental Protection

DESIGNATED DROUGHT EMERGENCY AREA – THE AREA OF THE COMMONWEALTH DESCRIBED IN THE GOVERNOR’S PROCLAMATION OR EXECUTIVE ORDER DECLARING A STATE OF DROUGHT AND WATER SHORTAGE EMERGENCY.

Emergency service area—The service area covered by a plan.

Nonresidential water customer—A water customer who is not a residential water customer. The term includes commercial, industrial, institutional and public users, including educational facilities, hotels, motels and restaurants. The term does not include hospitals or health care facilities.

PEMA—The Pennsylvania Emergency Management Agency.

Person—An individual, partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal or State government. The term includes the officers, employees and agents of a partnership, association, company, corporation, municipality, municipal authority, political subdivision or an agency of Federal or State government.

Plan—Local Water Rationing Plan—A drought response plan for the equitable allocation of limited water supplies, submitted by a public water supply agency, ~~purveyor~~ or the governing body of a political subdivision and approved by ~~the Council~~ **THE COMMONWEALTH DROUGHT COORDINATOR.**

Political subdivision—A county, city, borough, incorporated town or township.

Public water supply agency—~~A person, partnership, association, corporation, municipality or municipal authority, district or other entity supplying or authorized to supply water to the public~~ **"COMMUNITY WATER SYSTEM" AS THAT TERM IS DEFINED IN THE PENNSYLVANIA SAFE DRINKING WATER ACT, ACT 43 OF 1984, 35 P.S. §721.3.**

Purveyor—~~The owner or operator of a public water supply agency, including, public utilities, municipalities, municipal authorities, associations and other organizations which supply water to the public including the officers, employees and agents of the owner or operator.~~

Residential water customer—A water customer who receives water service for a single- or multi-family dwelling unit. The term does not include educational institutions, hotels, motels or similar commercial establishments.

Service area—The geographical area serviced by a ~~purveyor~~ PUBLIC WATER SUPPLY AGENCY.

Service interruption—The temporary suspension of water supply or reduction of water pressure below that required for adequate supply to a water customer or to a water supply system or portion thereof.

~~*Special emergency area*—The area described in the Governor’s Proclamation declaring a state of drought and water shortage emergency.~~

Water allotment—The maximum quantity of water allowed for each water customer over an applicable period as established by a plan.

Water customer—A person who is connected to and receives water service from a public water supply agency. The term includes both residential and nonresidential water customers as defined in this section.

Water rationing provisions—Provisions of a plan which require specific reductions in the amount of water used by water consumers, either on the basis of a percentage reduction or gallonage allotment. The term does not include prohibitions or restrictions of nonessential uses.

§ 120.2. Purpose.

This chapter establishes procedures for the ~~Department, PEMA and the Council~~ COMMONWEALTH DROUGHT COORDINATOR, AS AGENT FOR PEMA, to review and approve plans ~~for~~ BY public water supply agencies ~~purveyors~~ or ~~municipalities~~ POLITICAL SUBDIVISIONS in response to a ~~declared local~~ STATE OF DROUGHT OR water shortage ~~or drought~~ EMERGENCY THAT HAS BEEN DECLARED BY THE GOVERNOR WITHIN SPECIFIED AREAS OF THE COMMONWEALTH.

§ 120.3. Objective of a plan.

The objective of a plan is to balance the daily demands placed upon a ~~local~~ PUBLIC water supply ~~system~~ AGENCY with the requirement to maintain a sufficient water supply to meet the long term needs that may be placed upon the PUBLIC water supply ~~system~~ AGENCY during a period of water shortage or drought emergency. In particular, the water conservation measures of a plan are intended to:

(1) Avoid the depletion of a water supply to ensure that adequate water supplies are available to protect the health and safety of all water customer.

(2) Provide for the equitable distribution of water during the emergency.

§ 120.4. Responsibility to monitor local water supply and implement water conservation measures.

(a) Each public water supply agency, ~~purveyor~~ or governing body of each political subdivision ~~in~~ WHICH HAS A SOURCE OF WATER OR A SERVICE AREA WITHIN an area affected by drought conditions or a local water shortage shall monitor the level of its water supply and estimate the availability of future water supply sources, the rate of present and anticipated water usage and the effectiveness of water conservation measures being implemented by them.

(b) Each public water supply agency, ~~purveyor~~ or governing body of each political subdivision ~~in~~ WHICH HAS A SOURCE OF WATER OR A SERVICE AREA WITHIN an area affected by drought conditions or a local water shortage shall take prompt action to implement water conservation measures. These measures may include:

(1) Asking water customers to voluntarily conserve water.

(2) Implementing the development or activation of alternate sources of supplies.

(3) Implementing specific bans on nonessential uses of water.

(4) Implementing a plan as provided in § 120.5 (relating to implementation of plans) AND § 120.6 (RELATING TO IMPLEMENTATION OF FURTHER WATER USAGE REDUCTIONS).

§ 120.5. Implementation of plans.

(a) *Plan*

(1) Each public water supply agency, ~~purveyor~~ or governing body of a political subdivision is authorized to develop a plan. A plan ~~may~~ SHALL contain provisions to:

(i) Prohibit nonessential water use, if the restrictions do not conflict with ~~similar regulations already promulgated by the Council for the same geographical area covered by the proposed plans~~ 4 PA. CODE CHAPTER 119 .

(ii) Establish equitable water rationing provisions for residential, nonresidential, ~~health care facilities~~ and other water users together with appropriate implementing procedures.

(iii) Provide for granting of variances or exemptions to the provisions of a plan to address extraordinary hardships which may exist as a result of a plan.

(2) “Guidelines for the Development of a Local Water Rationing Plan” and a “Model Local Water Rationing Plan” may be obtained from the Department. Public water supply agencies are encouraged to contact the Department’s Bureau of ~~Water Resources Management~~ WATERSHED CONSERVATION, Post Office Box ~~87618555~~, Harrisburg, Pennsylvania 17105-~~85558761~~, ~~541-7800~~(717) 772-4048, for specific assistance in developing a system-specific plan.

(b) ~~Review and approval by Council~~ COMMONWEALTH DROUGHT COORDINATOR. The ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR will ~~consider~~ REVIEW local water rationing plans submitted to it for review and approval in accordance with the following procedures:

(1) The public water supply agency, ~~purveyor~~ or governing body of the affected political subdivision shall apply in writing to the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR for approval of its plan. The written request for approval shall include the following elements:

(i) A plan as approved by the public water supply agency, ~~purveyor~~ or governing body of the affected political subdivision.

(ii) A statement describing the existence and severity of the water shortage.

(iii) An express request for approval of the plan by the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR.

(iv) The signature of an authorized representative of the public water supply agency, ~~purveyor~~ or governing body of the affected political subdivision.

(2) ~~The written request for approval of the plan shall be sent to the Commonwealth Drought Coordinator for initial review and approval.~~ IF THE PLAN INCLUDES A SERVICE AREA WHICH IS NOT INCLUDED IN A CURRENTLY EFFECTIVE GOVERNOR’S PROCLAMATION, THE FOLLOWING PROCEDURES WILL BE FOLLOWED:

(i) ~~the~~ THE Commonwealth Drought Coordinator will determine whether or not the request, together with other available information, establishes the existence of a water shortage emergency that will require the Governor to issue a proclamation declaring a state of local drought and water shortage emergency for the affected area, AND WILL MAKE A RECOMMENDATION TO PEMA.

(3)(ii) ~~Having determined~~ IF PEMA CONCURS IN the existence of a local water shortage emergency, PEMA will submit to the

Governor a proposed proclamation to declare a state of local drought and water shortage emergency for the affected area described in the proclamation.

~~(4)(iii)~~ After the Governor signs the proclamation, PEMA will, ~~within not more than 72 hours immediately following the determination, call the Council in to emergency session to review the written request for approval of the plan~~ NOTIFY THE COMMONWEALTH DROUGHT COORDINATOR THAT THE PLAN MAY BE APPROVED AND PUT INTO EFFECT.

~~(3)~~ For ANY plans PLAN that ~~cover~~ COVERS emergency service areas already included under IN a ~~previously signed~~ CURRENTLY EFFECTIVE Governor's proclamation the Council may meet in a regularly scheduled or emergency session as determined by PEMA WILL GO INTO EFFECT UPON ITS APPROVAL BY THE COMMONWEALTH DROUGHT COORDINATOR.

~~(5)~~ At a regular or emergency session, the Commonwealth Drought Coordinator, or a designee, will brief the Council on the water shortage conditions that warrant the adoption of the plan. The Council will consider and adopt plans subject to the conditions or modifications as approved by the Council. The plan will become effective on the date of its approval by the Council, unless otherwise stated.

(c) Mandatory implementation of plans.

(1) After the Governor has issued a proclamation declaring a state of local drought and water shortage emergency for an area of the Commonwealth, ~~the Governor or the Council~~ THE COMMONWEALTH DROUGHT COORDINATOR may direct a public water supply, ~~purveyor~~ agency or governing body of a political subdivision that is located within OR HAS A SOURCE OF WATER WITHIN the ~~declared~~ DESIGNATED drought emergency area to prepare and submit a plan to the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR for review and approval.

(2) The public water supply agency, ~~purveyor~~ or governing body of a political subdivision shall submit its plan to the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR, IN ACCORDANCE WITH THE PROCEDURES DESCRIBED IN (B) ABOVE, within 10 calendar days after receiving written notification from the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR that the adoption and implementation of a plan by that public water supply agency, ~~purveyor~~ or political subdivision is necessary to deal with the circumstances of the drought and water shortage emergency. ~~The Governor's Proclamation that declares a state of local drought and water shortage emergency may also order public water supply agencies, purveyors or governing bodies of political subdivisions located within the declared drought emergency area to prepare and submit their plans to the Council within 30 calendar days after the~~

~~issuance of the proclamation. The plan that is submitted by the public water supply agency, purveyor or political subdivision shall contain all or portions of the "Model Local Water Rationing Plan" as directed by the Council.~~

~~(3) At regular or emergency sessions, the Commonwealth Drought Coordinator, or a designee, will brief the Council on the adoption of the submitted plan. The Council will consider and adopt the plan subject to conditions or modifications as approved by the Council. The plan will become effective on the date of its approval by the Council, unless otherwise stated.~~

(d) *Approval of a plan.* Upon approval by the Council COMMONWEALTH DROUGHT COORDINATOR of a plan submitted under subsection (b) or (c), the COMMONWEALTH DROUGHT COORDINATOR ~~Department~~ will:

(1) REQUIRE THE APPLICANT TO issue a notice to a AT least one newspaper serving the area covered by the plan, which will advise residential and nonresidential water customers or other persons doing business in the emergency service area of the approval of the plan and its effective date.

(2) Transmit to the Legislative Reference Bureau for [suggested] publication in the *Pennsylvania Bulletin*, a written notice which states the approval of the plan by the Council COMMONWEALTH DROUGHT COORDINATOR and its effective date.

(3) REQUIRE THE APPLICANT TO POST ~~Post or require the posting of~~ a copy of the plan in at least one public building; for example, a library, or a city, town or municipal building within the emergency service area for the review of the water customers affected by the implementation of the plan.

(4) REQUIRE THE APPLICANT TO MAKE COPIES OF THE PLAN AVAILABLE TO THE WATER CUSTOMERS AFFECTED BY THE IMPLEMENTATION OF THE PLAN, UPON REQUEST, EITHER ELECTRONICALLY OR IN HARD COPY.

(e) *Constructive notice.* The actions described in subsection (d) constitute constructive notice under 45 Pa.C.S. § 904 (relating to constructive notice) to all residential and nonresidential water customers or other persons doing business within the emergency service area for the purpose of enforcing the plan adopted and approved by the Council COMMONWEALTH DROUGHT COORDINATOR.

§ 120.6. Implementation of further water usage reductions.

(a) If a public water supply agency, ~~purveyor~~ or governing body of an affected political subdivision determines that it is necessary to further decrease the water usage of its residential, ~~or nonresidential~~ OR OTHER water customers, ~~or both~~, it

may request the Commonwealth Drought Coordinator to consider and approve revisions or amendments, or both, to its PLAN IN ACCORDANCE WITH THE PROCEDURE DESCRIBED IN § 120.5(B).

(b) ~~After consultation with PEMA the~~ THE Commonwealth Drought Coordinator may approve the requested revisions or amendments, or both, to the plan.

~~(e) An emergency session of the Council will only be called to review those requested revisions for amendments, or both, to a plan that are deemed to be extraordinary or significant in nature as determined by PEMA and the Commonwealth Drought Coordinator.~~

(dc) Constructive notice of approved revisions or amendments, or both, to a plan will be provided in accordance with the notification procedures described in § 120.5(d) (relating to implementation of plans).

§ 120.7. Enforcement of plans.

(a) The public water supply agency, ~~purveyor~~ or governing body of a political subdivision shall have primary responsibility for monitoring the compliance of residential, ~~and nonresidential~~ AND OTHER water customers with its plan.

(b) The public water supply agency, ~~purveyor~~ or governing body of a political subdivision shall institute procedures to monitor closely water supplies and current water usage to determine if water reductions are being attained consistent with the water conservation figures established in its plan. A public water supply agency, ~~purveyor~~ or governing body of a political subdivision shall ~~establish a mechanism to~~ REGULARLY advise the water customers of the effects of the water rationing program.

(c) Each public water supply agency, ~~water purveyor~~ or governing body of a political subdivision is authorized to alter meter reading schedules to assure compliance with its plan.

(d) Proper law enforcement authorities and private citizens have additional enforcement responsibilities and rights as specified in § 120.12 (relating to penalties).

(e) A political subdivision may enforce its plan by adopting an ordinance in accordance with § 120.11(a) and (b) (relating to enforcement by political subdivision ordinance).

§ 120.8. Service interruptions.

(a) A plan shall include provisions for the implementation of temporary service interruptions. This action would be necessary to achieve water use reductions to prevent a public water supply ~~system~~ AGENCY from depleting its water supply to

the point that vital service demands, such as public health and safety, firefighting and health care facilities, cannot be met.

(b) The following governs the implementation of service interruptions:

(1) To effectuate compliance with a plan, the public water supply agency ~~or purveyor~~ is authorized and required to plan and implement service interruptions to all or part of its water supply system, as the public water supply agency ~~or purveyor~~ deems appropriate, when one or more of the following conditions are determined by the public water supply agency ~~or purveyor~~ to exist as to its water supply system:

(i) The specific reduction in systemwide water usage has not been achieved.

(ii) The specified reduction in systemwide water usage has been achieved, but has failed to have a significant impact in extending limited water supplies.

(iii) Service interruptions are necessary to further extend limited or dwindling water supplies.

(2) If the public water supply agency ~~or purveyor~~ determines that service interruptions are necessary, the public water supply agency ~~or purveyor~~ shall notify its water customers through the public media, such as newspapers, radio, telephone and television, serving the water customers in its service area at least 1 day prior to the service interruptions, that a planned service interruption is to be imposed. In addition, the public water supply agency ~~or purveyor~~ shall notify the local coordinator of emergency management; PEMA; THE COMMONWEALTH DROUGHT COORDINATOR; the regional office of the Department of Environmental Resources PROTECTION; and the Pennsylvania Public Utility Commission, Bureau of ~~Safety and Compliance~~ FIXED UTILITY SERVICES if the public water supply agency ~~or purveyor~~ is subject to the jurisdiction of the Pennsylvania Public Utility Commission. The notice shall:

(i) State the days when the planned service interruptions will occur.

(ii) State the time when the planned service interruptions will commence and the time the interruptions will cease.

(iii) State whether the planned service interruptions are to be imposed on the entire system or a part thereof. If only part of the system will experience planned service interruptions, identify the geographical boundaries within which the planned service interruptions will occur.

(iv) Advise the customers within the area affected by planned service interruptions how to treat water received from the system for human consumption during the period of planned service interruptions and for additional time as necessary until full pressure is restored to the system.

(3) If the public water supply agency ~~or purveyor~~ imposes planned service interruptions as authorized and required by a plan, it shall provide for the continued delivery of water to health care facilities within the service area affected by the interruptions, by means of adequate, alternative delivery measures that may be necessary.

(4) If the public water supply agency ~~or purveyor~~ implements temporary service interruptions, it shall make provision, by any means possible, for the continued delivery of the water, as may be necessary, for the proper operation of sewage collection, treatment and disposal systems and facilities.

§ 120.9. Excess use charges.

(a) *Excess use charges.*

(1) Excess use charges are a positive means of securing compliance with a plan. If a ~~purveyor~~ PUBLIC WATER SUPPLY AGENCY elects to include excess use charges in a plan, the maximum excess use charge authorized to be imposed is as follows:

| | |
|--------------------------------------------------|--------------------------------------------|
| First 2,000 gallons or portion thereof | 5 times the actual rate charged for water |
| Each 1,000 gallons or portion thereof thereafter | 10 times the actual rate charged for water |

(2) Excess use charges may only be assessed against meter customers and shall be based upon actual meter readings.

(b) *Water allotments.* A residential or nonresidential water customer who exceeds the water allotments established by the plan shall be subject to an excess use charge. [the following:

(1)] Public water supply agencies ~~or purveyors~~ in the emergency service area are authorized to collect an excess-use charge based on the amount by which a water customer's use exceeds the water allotment established in the plan. The charges will be specified in the plan.

([2]c) Disposition of Excess Use Charges. Monies collected by public water supply agencies ~~or purveyors~~ through excess use charges may not be accounted for as income to the public water supply agency ~~or purveyor~~, but shall be placed in a reserve account. The disposition of funds placed in the reserve account shall be governed as follows:

([i]1) Funds collected by a public utility or a municipal corporation rendering services beyond its corporate limits shall be used to offset drought related costs as directed by orders and procedures adopted by the Pennsylvania Public Utility Commission.

~~((ii)2) Funds collected by a municipal authority or a municipal corporation or other purveyor ANY PUBLIC WATER SUPPLY AGENCY NOT COVERED IN PARAGRAPH (1), ABOVE, rendering services within its corporate limits shall be used to offset drought-related costs. as directed by the Council~~

~~((c)d) *Additional penalties.* In addition to the excess use charge, noncompliance with the plan may result in the following:~~

~~(1) For the first excess use, the public water supply agency or purveyor will warn the water customer that its water use may be discontinued if the water customer continues its noncompliance practices.~~

~~(2) For the second excess use, the public water supply agency or purveyor may interrupt or shut off service to the water customer for a period not to exceed 48 hours per incident. As an alternative, the public water supply agency or purveyor may install a flow restriction in the water customer's service line for the duration of the water shortage emergency. The cost incurred by the public water supply agency or purveyor to interrupt or shut off and reinstate service, or to install and remove a flow restriction, shall be assessed to the water customer by the public water supply agency or purveyor.~~

~~((d)e) *Appeal of decision or action.* A water customer aggrieved by a decision or action taken by a public water supply agency or purveyor under the authority of this section may proceed in accordance with the following:~~

~~(1) Each public water supply agency or purveyor shall adopt procedures which provide an opportunity for the water customer to rebut the finding of a violation or to present evidence of circumstances beyond the water customer's control which resulted in the violation. Each public water supply agency or purveyor shall keep a record of the evidence presented by the water customer concerning the disputed violations and shall provide the water customer with a written notice of its final decision and action in the case.~~

~~(2) A water customer aggrieved by the final decision or action of a water supply purveyor AGENCY may file an appeal with the PUBLIC UTILITY COMMISSION, IF THE WATER SUPPLY AGENCY IS REGULATED BY THE PUBLIC UTILITY COMMISSION, AND IN ALL OTHER INSTANCES WITH THE Court of Common Pleas in the county the water service is provided, in accordance with the provisions and procedures of 2 Pa.C.S. § § 551—555 and 751—754 (relating to the Local Agency Law).~~

~~§ 120.10. **Temporary suspension of water rationing provisions.**~~

~~(a) Water rationing provisions may be suspended for the service area of a public water supply agency or purveyor if meteorologic and hydrologic conditions create a significant improvement in the water supply of the public water supply agency or purveyor.~~

~~(b) A significant improvement shall be defined as an improvement in the ability of the public water supply agency or purveyor to supply the water demands of its water customers which is not attributable to conservation or rationing efforts and which is evidenced in the case of public water supplies using:~~

~~(1) Surface water sources, by reservoirs filled to capacity or containing at least 60 days of storage.~~

~~(2) Groundwater sources, by a recovery of the water table sufficient to allow the public water supply agency or purveyor to reasonably predict supplies which will meet demand for at least 60 days.~~

~~(3) Both surface water and ground water sources, by recovery sufficient to allow the public water supply agency or purveyor to reasonably predict that the combined sources can provide water to meet demand for at least 60 days.~~

~~(c) If a public water supply agency or purveyor or an applicant determines that a significant improvement in water supply has occurred, the public water supply agency or purveyor or applicant may apply for a temporary suspension of water rationing provisions through the following process:~~

~~(1) The applicant shall send to the Commonwealth Drought Coordinator an application for temporary suspension, which describes the improvement in water supply conditions in sufficient detail to demonstrate that there has been a significant improvement in the water supply.~~

~~(2) The applicant shall send a copy of the application to each public water supply agency or purveyor and local government in the emergency service area of the affected plan. The applicant shall also notify the public water supply agency or purveyors and local governments in the affected emergency service area that they shall file objections to the temporary suspension with the Commonwealth Drought Coordinator within 7 days of the Commonwealth Drought Coordinator's receipt of the application.~~

~~(3) An application to temporarily suspend water rationing provisions shall become effective 7 days after it is received by the Commonwealth Drought Coordinator unless it is objected to by PEMA, the Commonwealth Drought Coordinator, a purveyor or a local government in the emergency service area of the affected plan. If objections are filed with the Commonwealth Drought Coordinator or PEMA, the Council will consider the objections and act upon the application in the interest of effective drought response.~~

~~(4) The applicant shall publicize the temporary suspension of water rationing provisions in the manner reasonably calculated to notify persons in the affected service area.~~

~~(d) The applicant has the responsibility to immediately notify the Commonwealth Drought Coordinator if the water supply situation changes so that the applicable conditions described in subsection (b) no longer exist. Upon the notification, the Commonwealth Drought Coordinator, after consulting with PEMA, may terminate the suspension and reinstate the water rationing provisions. The applicant shall publicize the reinstatement of water rationing provisions in a manner reasonably calculated to notify persons in the affected service area.~~

§ 120. 11. Enforcement by political subdivision ordinance.

(a) A political subdivision may adopt an ordinance to enforce the various provisions of ~~its~~ A plan within the jurisdictional boundaries of the political subdivision, if the following actions precede the adoption of the ordinance:

(1) The PLAN HAS BEEN ~~political subdivision has] prepared and submitted [its plan~~ to the COMMONWEALTH DROUGHT COORDINATOR in accordance with § 120.5 (relating to implementation plans).

(2) The Governor has issued a proclamation declaring a state of local drought and water shortage emergency for an area of the Commonwealth that includes the political subdivision.

(3) The ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR has approved the ~~political subdivision's~~ plan and ~~has provided~~ constructive notice of the plan as described in § 120.5(d) HAS BEEN PROVIDED to residential and nonresidential water customers or other persons doing business within the emergency service area of the plan.

(b) After the actions in subsection (a) have occurred, a political subdivision may adopt and publish an ordinance in accordance with its applicable county, city, borough or township code. The purpose of the ordinance shall be to ~~restrict nonessential water use by residential and nonresidential water customers or other persons or to impose water conservation measures~~ IMPLEMENT THE PLAN within the jurisdictional boundaries of the political subdivision. The ordinance may include, adopt, incorporate or otherwise enact one or more sections, provisions or portions of the ~~political subdivision's~~ approved plan.

(c) [A] ANY person who violates a local water rationing/conservation ordinance adopted by a political subdivision, in accordance with the procedures specified in subsections (a) and (b), shall be subject to the fines and penalties that apply to violations of that ordinance as prescribed in the county, city, borough or township code under which the ordinance was adopted.

§ 120. 12. Penalties.

A person who violates a provision of this chapter, who fails to carry out duties and responsibilities imposed by this chapter or who impedes or interferes with actions undertaken or ordered under this chapter is subject to the penalties provided under 35 Pa.C.S. § 7707 (relating to penalties). Violation of a provision of this chapter is a summary offense enforceable by law enforcement officers or private citizens in accordance with 234 Pa. Code Chapters 50 and 6000 (relating to procedure in summary cases; and rules of criminal procedure for the municipal court of Philadelphia).

§ 120.13. Additional water conservation and protection policies.

Nothing in a plan or this chapter limits or affects the power or authority of a political subdivision to adopt or enforce ordinances, rules, restrictions and orders for water conservation and protection of essential supplies, PROVIDED THAT if the ordinances, rules, restrictions and orders ~~are not inconsistent~~ DO NOT CONFLICT with the requirements of this chapter and Chapters 118 and 119 (relating to reductions of major water use in ~~the Delaware River Basin A~~ COMMONWEALTH drought emergency area; and prohibition of nonessential water uses in a Commonwealth drought emergency area), AND river basin commission orders or plans.

§ 120.14. Repeal of a plan.

~~[(a)]~~ A plan may be AMENDED OR repealed only by action of ~~Council~~ THE COMMONWEALTH DROUGHT COORDINATOR upon the written request of ~~a local government or a public water supply agency or a purveyor~~ THE PUBLIC WATER SUPPLY AGENCY OR GOVERNING BODY OF A POLITICAL SUBDIVISION THAT DEVELOPED AND SUBMITTED THE PLAN. A request for AMENDMENT OR repeal of a plan shall document the conditions justifying the AMENDMENT OR repeal, be signed by an authorized representative of the ~~local government or a public supply agency or a purveyor~~ APPLICANT and be ~~filed with~~ SUBMITTED TO the Commonwealth Drought Coordinator FOR APPROVAL.

~~(b) A plan covering the service area of a single public water supply agency or purveyor may be repealed if concurred in by both the purveyor and the local government affected and approved by the Council.~~

~~(c) A plan covering service areas of several purveyors may be:~~

~~(1) Amended to delete one or several service areas if concurred in by each purveyor and municipality affected, and approved by the Council.~~

~~(2) Repealed in its entirety if requested by the water purveyors and all municipalities in the emergency service area of the plan, and approved by the Council.~~

§ 120.15. Notification of termination.

~~Whenever conditions within a public water supply system permit the repeal of the plan, the Department will send a notice of the termination of the plan to the Legislative Reference Bureau for suggested publication in the *Pennsylvania Bulletin*.~~ UPON APPROVAL OF THE REPEAL OF A PLAN IN ACCORDANCE WITH SECTION 120.14 (REPEAL OF A PLAN), THE COMMONWEALTH DROUGHT COORDINATOR WILL REQUIRE THE

APPLICANT TO ISSUE A NOTICE TO AT LEAST ONE NEWSPAPER SERVING THE AREA COVERED BY THE PLAN, WHICH WILL ADVISE RESIDENTIAL AND NONRESIDENTIAL WATER CUSTOMERS OR OTHER PERSONS DOING BUSINESS IN THE EMERGENCY SERVICE AREA OF THE REPEAL OF THE PLAN AND ITS EFFECTIVE DATE. THE COMMONWEALTH DROUGHT COORDINATOR WILL ALSO TRANSMIT TO THE LEGISLATIVE REFERENCE BUREAU FOR PUBLICATION IN THE *PENNSYLVANIA BULLETIN*, A WRITTEN NOTICE WHICH STATES THAT THE PLAN HAS BEEN REPEALED BY THE COMMONWEALTH DROUGHT COORDINATOR AND ITS EFFECTIVE DATE.

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 30-58
 SUBJECT: Local Water Rationing Plans
 AGENCY: PA Emergency Management Agency

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
 2000 OCT 24 AM 10:40
 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|----------|-------------------------------|-------------------------------------------------------------------|
| 10/24/00 | <i>Paula Henschel</i> | HOUSE COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS |
| 10/24/00 | <i>Rousselle Kopperheffer</i> | |
| 10/24/00 | <i>Valerie Keenan</i> | SENATE COMMITTEE ON STATE GOVERNMENT |
| 10/24/00 | <i>Jerry Good</i> | |
| 10/24/00 | <i>J. Helmet</i> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL |
| 10/24/00 | <i>C. L. Brown</i> | LEGISLATIVE REFERENCE BUREAU |